(3)

Supreme Court, U.S.
FILED
SEP 15 1994
OFFICE OF THE CLERK

No. 94-4

In the

Supreme Court of the United States

October Term, 1994

R.F. and L.H. et al.,

Petitioners,

vs.

BOARD OF EDUCATION
OF THE BOROUGH OF PARK RIDGE,
BERGEN COUNTY, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION

PETITIONERS' REPLY BRIEF

Rory Freedman
Meredith Freedman
8 Hall Court
Park Ridge, New Jersey 07656
(201) 573-0393
Pro Se

Lorraine Hennessy
Thomas Hennessy
73 Louville Avenue
Park Ridge, New Jersey 07656
(201) 391-0263
Pro Se

BEST AVAILABLE COPY

23 pp

TABLE OF CONTENTS

	Page
Table of Authorities	ii
Statutes and Codes Involved	iii
Argument	
I. Respondents have misrepresented the facts of this case	1
II. All decisions in this case have been contradictory or in error and have disregarded state law	2
III. In conflict with state, federal and Supreme Court cases, Respondents have denied Petitioners their due process rights	5
IV. The discipline imposed is unreasonable, excessive and illogical; has failed to consider all mitigating factors and conflicts with state and federal cases	8
V. This case is the first of its kind in New Jersey, is a violation of New Jersey statute and should be remanded to the Supreme Court of New Jersey	10
Conclusion	10
Petitioners' Appendix	
Principal's letter to parents dated June 11, 1992	PRA-1
Park Ridge Board of Education's letter to parents dated June 17, 1992	PRA-3
Park Ridge Substance Abuse Policy 5131.6	PRA-5
Park Ridge Athletic Contract	PRA-7

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Joint Anti-Fascist Refugee Committee v. McGrath, 34 U.S. 123 (1951) 5, 6, 8

STATE CASES

Clark County Bd. of Ed. v. Jones, 625 S.W. 2d 586 (Ky. App. 1981) 7, 8, 9

Labrosse v. St. Bernard Parish School Board, 483 So. 2d 1253 (La. App. 4th Cir. 1986) 6, 8, 9

Ladson v. Board of Ed., Union Free Sch. Dist. #9, 323 N.Y.S.2d 545 (1971) 9

Warren County Bd. of Educ. v. Wilkinson, 500 So.2d 455 (1986) 5, 8, 9

NEW JERSEY DEPARTMENT OF EDUCATION DECISIONS

A.F. v. Bd. of Ed. of Holmdel, 1991 S.L.D. 914 4

C.R.R. v. Bd. of Ed. of Holmdel, 1990 S.L.D. 877 ..... 6, 8

G.L.H. v. Bd. of Ed. of Hopewell Valley Reg. Sch. Dist. et al. 87 S.L.D. 891, 901, St . Bd. 906 ..... 3, 4

U.S. CONSTITUTIONAL AMENDMENTS

Fourteenth Amendment..... 5, 7

TABLE OF AUTHORITIES – Continued

Page

NEW JERSEY STATUTES

N.J.S.A. 18A:40A-10 3
N.J.S.A. 18A:40A-11 ..... 3, 10

NEW JERSEY ADMINISTRATIVE CODE

N.J.A.C. 6:29-6.3(c) 2 3

ARGUMENT

POINT I

Respondents have misrepresented the facts of this case.

Respondents state in Point I of their argument that the Petitioners in this matter, Meredith Freedman and Thomas Hennessy, have no standing in this case. These are incorrect facts. Originally, the title of the petition included R.F. and L.H. and was signed by their parents, Meredith Freedman and Thomas Hennessy. The petitions were returned to Petitioners stating that the parents were required to include their names in the title of the case. The parents complied with these instructions and returned the petitions. After consulting with the clerk's office, however, the parents were advised that the petitions were incorrect and that R.F. and L.H. could only be represented by themselves. This was confirmed by a letter from the Petitioners to the clerk dated September 8, 1994. Pursuant to the directions of the clerk's office, Petitioners have changed the name of the case back to its original name and corrected the Reply Briefs.

Therefore, R.F. and L.H. and their parents are all parties to this case, all claim injuries in this case, and all have legal standing in this case.

Throughout their reply brief, Respondents have referred to Petitioners as having consumed "alcohol" or "alcoholic beverages." This is a misleading description. The Petitioners traveled to the prom on a private mini-bus with ten other students. At some point during this trip, paper cups were given out for a toast. Neither R.F. nor L.H. were interested in participating and declined to accept the cups. Sometime later, a champagne toast was made, and other students placed cups of champagne in Petitioners' hands. Rather than get involved in a lengthy discussion, both students reluctantly took one sip of champagne and returned the cups. Although it would have been infinitely better had they declined the champagne completely, the students, only 17 years old at the time, made an instantaneous

decision in a difficult situation. R.F. and L.H. did not "consume alcoholic beverages." They reluctantly took one sip of champagne.

Respondents also state that when R.F and L.H arrived at the prom, an odor of alcohol was detected by the principal. This is not a fact. When R.F. and L.H. arrived at the prom, the principal *alleges* he detected an odor of alcohol emanating from four of the boys in Petitioners' group. However, three of the five chaperones clearly indicated that there was no odor of alcohol whatsoever from these boys. When the parents arrived, they were completely in support of the principal. However, when they noticed that the students were not intoxicated and did not smell of alcohol, they challenged the principal and asked him why he singled out these students. Furthermore, not one chaperone, including the principal, ever mentioned a smell of alcohol concerning R.F. and L.H.

Respondents have misrepresented the facts of this case.

POINT II

All decisions in this case have been contradictory or in error and have disregarded state law.

In Point II of Respondents' Brief, they state that the regulations have been found to provide sufficient notice to R.F. and L.H. by the Commissioner of Education in New Jersey, the New Jersey State Board of Education, the New Jersey Appellate Division and the New Jersey Supreme Court because they prohibit the use of alcohol at all times, in all school buildings, on school property and at any activity sponsored by the school administrators.

This is incorrect since the decisions below have all been contradictory, in error or have disregarded state law. In the initial emergency decision by the Office of Administrative Law, the judge cited Substance Abuse Policy 5131.6 by stating that the policy prohibited the use of illegal substances at all times on school property and at all

school activities sponsored by the school officials. PA-23.[1] Since the Respondents had already conceded that the students were not in possession of alcohol at a school activity, the policy was not applicable to this situation and this decision was clearly in error.

In the emergency decision that same day in which the Deputy Commissioner denied the motion for emergent relief, he failed to cite any rule in either the Substance Abuse Policy, the prom regulations or state law which prohibits consumption of alcohol en route to the prom and must be considered to be in error. PA-21.

In the initial decision by the Office of Administrative law concerning the underlying petition, the court stated that a local board of education has the statutory authority to adopt policies and procedures governing the discipline of students involved in the use of substances at school functions. The court further stated that:

"The only requirement is that these policies and procedures be adopted and implemented in accordance with the rules and regulations promulgated by the the State Board. N.J.S.A. 18A:40A-11." PA-14. This finding is contradictory since N.J.S.A. 18A:40A-11 does not sanction disciplining students unless they are in possession of or under the influence of alcohol in school or at a school function.

In the decision concerning the underlying petition, the Commissioner of Education found that the board's action against R.F. and L.H. was in accord with its regulations, education policy and state law. PA-10. The board's action was, in fact, not in accord with its own Substance Abuse Policy, its prom regulations or with state statutes. Specifically, it was in violation of N.J.S.A. 18A:40A-10, N.J.S.A. 18A:40A-11 and N.J.A.C. 6:29-6.3 (2.).

In support of this decision, the Commissioner cited two cases of students involved with substance abuse: *G.L.H. v. Bd. of Ed. of*

---

[1] "PA" denotes Petitioners' Appendix.

Elmwood Park, 1974, S.L.D. 611 and *A.F. v. Bd. of Ed. of Holmdel*, 1991 S.L.D. 914. However, neither of these situations bears any relationship to the instant case and do not support the Commissioner's decision. In *G.L.H.*, the student was found in possession of alcohol on school property and was guilty of vandalism. In *A.F.*, the student was intoxicated at her prom and passed out. While disciplining these students was in accord with state law, disciplining the Petitioners was in violation of the above state statutes and administrative code.

Furthermore, the Commissioner's decision failed to cite anything in Respondents' policies or in state law that sanctioned their disciplinary action and is in error.

The decision of the New Jersey State Board of Education is contradictory. While it agrees with the ALJ that the Board's policy was clearly communicated, the State Board stated that to reduce the possibility of misunderstanding in the future, "we urge the Board to review its written policy to determine if it can be phrased better." PA-7. It should be obvious from this decision that the New Jersey State Board of Education found Respondents' regulations unclear.

All of the written decisions concerning this case have cited rules that are not applicable to this situation, have been contradictory or have been in violation of state law. Furthermore, none of the above decisions have cited anything in the Park Ridge Substance Abuse Policy, prom regulations or state statutes which sanctions the disciplinary action of Respondents.

Lastly, Respondents state in Point I of their brief that "pursuant to the direction of the State Board, the prom regulations have been revised to specifically prohibit consuming alcohol while traveling to the Prom." RB-6.[2] Obviously the prom regulations were unclear if Respondents were directed to revise them.

---

[2] "RB" denotes Respondents' Brief.

POINT III

In conflict with state, federal and Supreme Court cases, Respondents have denied petitioners their due process rights.

Respondents have conceded in Point II of their Brief in Opposition that a student precluded from attending his/her graduation exercises is at least entitled to the minimal due process requirements of notice of the charge, explanation of the evidence and an opportunity to present his/her story.

They further claim that because R.F. and L.H. were given a chance to be heard by the Superintendent and the Board of Education, they were not denied due process in violation of the Fourteenth Amendment.

However, based on other state, federal and Supreme Court decisions, the Respondents did not meet the basic due process requirements. As indicated by the *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123 (1951), the accused are entitled to receive notice of the charges against them. While Respondents claim that R.F. and L.H. did in fact receive notice of the charges, they were charged twice—before and after their hearing before the Board—with two completely different charges. The first charge, consuming alcohol "prior to" arriving at the prom, did not state which rule was violated, but instead declared a general violation of the Substance Abuse Policy and the prom regulations. PRA-1.[3] This clearly conflicts with *Warren Country Bd. of Educ. v. Wilkinson*, 500 So.2d at 461 (1986) in which the Supreme Court of Mississippi found that a school's notice of the charges must state which rule was violated.

Apparently Respondents realized there was no Substance Abuse

---

[3] "PRA" denotes Petitioners' Reply Appendix.

Policy or prom rule prohibiting consumption of alcohol prior to arriving at school or a school function and decided to change the charge to one they could interpret with more flexibility. The first charge was then changed to the second charge—that the students were in "unsatisfactory condition," a violation of the prom regulations. PRA-3. This charge was made after the Board hearing, when the students no longer had an opportunity for a hearing. This is in direct conflict with the *Joint Anti-Fascist Committee* case which holds that due process includes both notice and a hearing.

Respondents claim that the students were punished for consuming alcohol while traveling to the prom and that when they were later charged with being in "unsatisfactory condition," this was not a different charge but a "more specific" charge. Petitioners fail to see how these two charges are similar or that one is more specific than the other since any reference they have made to these charges has been from completely different points in the prom regulations. Both are separate and unique charges and as such are in conflict with the decision in *Labrosse v. St. Bernard Parish School Board,* 483 So.2d at 1257 (La. App. 4th Cir. 1986) in which the court found that changing the charges after the hearing violates the student's right to due notice of the nature and cause of the charges against him/her. The fact that the *Labrosse* case dealt with an expulsion while the instant case deals with the graduation ceremony does not give Respondents the right to arbitrarily change the charges after the hearing to fit their needs.

The only New Jersey case involving a student consuming alcohol before arriving at school is *C.R.R. v. Bd. of Ed. of Holmdel,* 1990, S.L.D. 877 (Comm. Ed. June 4, 1990). In this case, a student who admitted consuming alcohol before arriving at a baseball practice was suspended for five days and expelled from the baseball team. After the student appealed the school's decision, the Commissioner found that for purposes of the athletic rule, the discipline imposed was proper. However, concerning C.J.R.'s five day suspension, the Commissioner found that the petitioner had the right to a new hear-

ing concerning the school's failure to follow its testing policy and to seek expungement of any improper discipline from the student's school record. This is virtually the same circumstances as the instant case since R.F. and L.H. were not in possession of alcohol, were not tested for substance abuse and were not intoxicated. The Respondents were in violation of their own regulations since point nine of the prom regulations clearly requires that students suspected of being under the influence of alcohol be examined and tested immediately. Despite R.F.'s and L.H.'s repeated requests for testing, the principal refused, denying them their due process rights.

In *Clark County Bd. of Ed. v. Jones*, 625 S.W. 2d. 586 (Ky App. 1981), the court found that in disciplining students, administrators' actions are arbitrary if they do not consider the previous general conduct of the students involved; the academic standings of the students; the probability of a recurring violation and the alternative punishments or restrictions.

Respondents state that although the *Clark County* case deals with expulsion, while the instant case does not, the Petitioners were nevertheless given an opportunity to bring any factors they thought relevant to the board's attention at a board hearing. This is not accurate since board member Gretsas arrived late at the meeting, missed the testimony of three of the parents, most of the testimony of the Petitioners and proceeded to vote anyhow. This is in violation of students' Fourteenth Amendment due process rights to a fair and impartial hearing. Furthermore, Respondents admit in point 26 of their Answer to Petitioners' Complaint before the Commissioner of Education that they "did not ask questions, present evidence, present oral testimony or articulate any reasons in support of [the principal's] disciplinary action."

There is no evidence that Respondents considered R.F.'s and L.H.'s excellent academic records, their exemplary behavior, the probability of a recurring violation or alternative punishments. Their action is therefore in conflict with the *Clark County* case.

Petitioners also point out that Respondents stated that in the *Clark County* case, the court approved the high school regulation which prohibits using alcoholic beverages while in transit to school functions. This is erroneous information. The school regulations prohibit using alcoholic beverages while in transit to school, not school functions. See *Clark County*, 625 S.W. 2d at 588. Respondents have again misrepresented the facts of this case.

Based on the above, the action of Respondents is in conflict with *Warren County, supra, Labrosse, supra, Joint Anti-Fascist Committee, supra, Clark County, supra and C.R.R., supra.*

POINT IV

The discipline imposed is unreasonable, excessive and illogical; has failed to consider all mitigating factors and conflicts with state and federal cases.

The discipline imposed is unduly harsh and is illogical. There is nothing in the Park Ridge rules or regulations that is more harsh and unforgiving than the discipline imposed upon the Petitioners. Students who are in possession of marijuana or are under the influence of alcohol in school are not subject to denial of participation in the graduation ceremony.

Respondents claim in Point III of their Brief in Opposition that the discipline imposed upon Petitioners is similar to that imposed on football players. RB-18. They claim that since the prom is not an ongoing activity like football and band and since student consumption of alcohol is of serious concern to school administrators, it was reasonable to prevent R.F. and L.H from attending all year-end activities.

This is in contradiction of Respondents' Substance Abuse policy. (PRA-5) If the consumption of alcohol is, in fact, of serious concern to the school administrators, then students should also be prohibited

from consuming alcohol before arriving at school. Yet, this does not appear in the substance abuse policy, proving that prom attendees are unfairly treated.

Furthermore, even the Park Ridge football regulations at least give the players three strikes before they are out. Specifically, students who use alcohol during the season are suspended from play for one week, required to perform a service project and must receive counseling before returning to play. For a second violation, players are suspended from play for three weeks, required to perform service projects and counseled before returning. Subsequent violations result in removal from the team. PRA-7

Therefore, requiring a student who violates the prom regulations to miss the prom, the Baccalaureate, the senior breakfast and the graduation ceremony is illogical, unfair and excessive.

The punishment imposed on the Petitioners is in conflict with *Warren County, supra, Labrosse, supra, Ladson, supra and Clark County, supra.*

Respondents have been unable to cite one state or federal case where students have been denied participation in the graduation ceremony as a disciplinary measure. In fact, in the rare case dealing specifically with denial of participation, the court found that unless there was a reason to suppose that the student's presence at the graduation ceremony would cause a disruption, denial of participation was not proper. *Ladson v. Board of Ed., Union Free Sch. Dist. #9,* 323 N.Y.S.2d 545.

Denying a student participation in the graduation ceremony is unduly harsh and unforgiving. It causes irreparable harm and deprives the student and his or her family of a precious memory forever. Denying R.F. and L.H. participation in the graduation ceremony is an extraordinary action for unextraordinary behavior and represents a precedential decision by school administrators. This matter

presents a federal question of significant importance to every future graduate. Consideration by this Court would establish reasonable standards for the denial of participation in the graduation ceremony and eliminate the necessity for costly and unnecessary legal challenges.

POINT V

This case is the first of its kind in New Jersey, is a violation of New Jersey Statute, and should be remanded to the Supreme Court of New Jersey.

Every case cited by Respondents in support of their action is irrelevant to this case. They have failed to cite one case involving a student who was disciplined for consuming alcohol prior to arriving at school. There has never been any case in New Jersey where students were disciplined for consuming alcohol at home or prior to arriving at school or a school function. (Unless they were athletes or arrived intoxicated.)

N.J.S.A. 18A:40A-10 and N.J.S.A. 18A:40A-11 require that all schools provide a *clear* written policy for the disciplining of students in possession of or under the influence of alcohol in school or at a school function. There is no state law that sanctions disciplining students who consume alcohol away from school.

The action of Respondents represents the first of its kind in this state and sets a dangerous precedent. Therefore, concerning the legality of Respondents' action, this case should be remanded to the Supreme Court of New Jersey.

CONCLUSION

For all the reasons set forth above, Petitioners respectfully request that a Writ of Certiorari be granted, or in the alternative, that this matter be remanded to the Supreme Court of New Jersey.

Respectfully submitted,

Rory Freedman, *Pro Se*

Meredith Freedman, *Pro Se*

Richard Freedman, *Pro Se*

Lorraine Hennessy, *Pro Se*

Thomas Hennessy, *Pro Se*

Catherine Hennessy, *Pro Se*

PETITIONERS' REPLY APPENDIX

Park Ridge Public Schools
2 Park Avenue
Park Ridge, New Jersey 07656

Catherine Mozak
Superintendent of Schools
Telephone: (201) 391-6511

June 11, 1992

Mr. and Mrs. T. Hennessy
73 Louville Ave.
Park Ridge, New Jersey 07656

Re: Lorraine Hennessy - Prom Incident

Dear Mr. and Mrs. Hennessy:

This is to advise you that disciplinary action has been taken with regard to your daughter Lorraine, as a result of the incident which occurred at the Prom on June 5, 1992. Upon my detection of the odor of alcohol emanating from a group of students, I questioned the students individually as to whether they had consumed alcoholic beverages prior to attendance at the Prom. Lorraine indicated that she had, in fact, consumed alcohol, in violation of Board Policy No 5131.6 and the Park Ridge High School Prom/Snow-ball Regulations. Please be advised that in accordance with the foregoing Policy and Regulation, Lorraine is hereby prohibited from attending all end of the year sponsored activities, including the Baccalaureate Ceremony, the Senior Breakfast and Graduation Exercises.

Please continue to speak with Lorraine, as we will regarding the gravity of this incident. We will continue to provide support to her from our administrative and guidance personnel. Please contact us

us if we can be of assistance in helping you to support your child.

Sincerely,

/s/ Emil Binotto

Emil Binotto
Principal
cc: C. Mozak
J. McCaughey
A. DiFiore
Counselor

Park Ridge Board of Education
2 Park Avenue
Park Ridge, New Jersey 07656
Telephone (201) 573-6000

Neil Giovaniello
President
Catherine Mozak
Superintendent of Schools

Louise Ruhle
Vice President
Richard M. McManus
Board Secretary and Business Administrator

George Apfel
Kathleen Coleman
George Gretsas
Gerald Hoffman
James Violante

June 17, 1992

Mr. and Mrs. R. Freedman
8 Hall Court
Park Ridge, New Jersey 07656

Dear Mr. and Mrs. Freedman and Rory:

This is to advise you that following your presentation to the Board on June 15, 1992 and its deliberations, the Board took action to affirm the recommendations of principal Emil Binotto and Superintendent Catherine Mozak to impose the discipline required by Item 9 of the Prom/Snowball regulation on your daughter, Rory. While the Board is certainly sensitive to the disappointment which

you and your daughter are experiencing as a result of its decision, it believes that the reason why there have been so few alcohol and/or drug related incidents on prom night is because the regulations have been applied uniformly and without exception. Your daughter was aware of the regulations which prohibited her from consuming *any* alcohol before attending the prom. Once having done so, she was, by definition, in an "unsatisfactory condition." The penalty for members of the senior class is restriction from participating in all end of year school activities including graduation exercises. The regulations permit no exceptions.

For all of the above reasons, the penalty imposed upon your daughter, including restricting her from participating in all of end of year school-sponsored activities including graduation exercises, was affirmed by the Board of Education.

Very truly yours,

/s/ Catherine Mozak

Catherine Mozak

Acting Board Secretary

enc.

PARK RIDGE SUBSTANCE ABUSE POLICY 5131.6

* * * * * *

C. PREVENTION

It is recognized that prevention is preferable to correction of problems.

Therefore, each principal is requested to establish procedures in the operation and supervision of both curricular and co-curricular functions which will prevent misuse of illegal substances. These include but are not limited to the following:

1. Adequate warning to students and parents of the resulting disciplinary action in case of violations.

2. Appropriate supervision at all school sponsored activities.

3. Prohibition of use of substances by anyone (adults included) at any school function, in school facilities at any time, and on school property during school hours.

* * * * * *

F. PROCEDURES FOR REFERRAL OF A STUDENT SUSPECTED OF SUBSTANCE USE (NOT INCLUDING ANABOLIC STEROIDS)

* * * * * *

13. Sanctions for possession and use of illegal substances:

Suspension up to ten (10) days; conference with parents, student, principal, Child Study Team, as necessary; and medical examination as determined by the principal.

* * * * * *

H. INCIDENTS INVOLVING THE SALE, PURCHASE, TRANSFER, OR POSSESSION OF ILLEGAL SUBSTANCES ON SCHOOL PROPERTY OR AT SCHOOL FUNCTIONS

1. Regulations

a. The possession and the use of illegal substances is forbidden on school property at all times, at any school function, or for any person under school jurisdiction.

* * * * * *

J. PROCEDURES FOR REFERRAL OF A STUDENT SUSPECTED OF BEING UNDER THE INFLUENCE OF A CONTROLLED DANGEROUS SUBSTANCE DURING SCHOOL SPONSORED ACTIVITIES BEYOND SCHOOL HOURS

If any student is suspected of using or being under the influence of any chemical substance during any school sponsored activity, the principal or his designee shall immediately notify the parents. Arrangements will be made for an immediate examination of the pupil by a doctor following the procedure detailed in "F. 4" above.

Sanctions will be applied where appropriate which may include those specified in "H" above. For use of substances at school functions, in addition or in lieu of sanction in "H" above, students will be prohibited from attending other school-sponsored activities such as proms and graduation.

PARK RIDGE ATHLETIC CONTRACT

* * * * * *

Consequences for use of controlled or dangerous substances:

For the first violation, the student will not participate in games or practices for a minimum of one week. In addition, he/she will be assigned to a school-related service project. Also, counseling and/or substance evaluation must be implemented before the student returns to practice sessions.

For the second violation, the student will not participate in games or practices for a minimum of three weeks. He/she will be assigned to school-related service projects. Additional counseling and/or substance evaluations must be implemented before the student returns to practice sessions.

For subsequent violations, the student will be removed from the team and a mandatory drug/alcohol evaluation will occur.